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No. 328

In the Supreme Court of the United States

OCTOBER TERM, 1969

STUYVESANT INSURANCE COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The United States District Court for the Eastern District of Missouri denied petitioner's motion to obtain remission of a $10,000 bond forfeiture (R. 6-8).[1] The bond was written by petitioner in a criminal case involving defendant Sharon Kathleen Davis (R. 3). It provided "that the defendant is not to depart the Eastern District of Missouri * * *, except

[1] "R" refers to the one volume record of proceedings on file with the Clerk of this Court.

in accordance with such orders * * * as may be issued by" the United States District Court (Pet. 7, 10). On January 12, 1968, at her arraignment, Mrs. Davis requested permission to visit Peoria, Illinois, and such permission was granted by the court (R. 3-4). On March 4, 1968, when the case was next called, Mrs. Davis did not appear and the trial court ordered her bond forfeited (R. 5).

Petitioner urges that the court's enlargement of the bail travel restrictions without its consent exonerated it from the bond (Pet. 3). However, the bond contract used in the present case specifically provided that the bond could be modified by order of the district court. As the court of appeals noted, there is nothing in the bond which requires notifying the surety if the court issues an order enlarging the territorial limits of the bond (Pet. 11, 14).

Petitioner's reliance on *United States* v. *Foster*, 79 F. Supp. 422 (S.D. N.Y.), is misplaced, since the bond form used there did require the consent of the surety to any expansion of the territorial limits of the bond (79 F. Supp. at 424 n. 1). *United States* v. *Egan*, 394 F. 2d 262, 267 (C.A. 2), certiorari denied *sub nom. Stuyvesant Insurance Company* v. *United States*, 393 U.S. 838, which petitioner cites, *affirmed* an order of forfeiture and is entirely consistent with the result here. While the *Egan* court did suggest that better procedures be used in the future to set forth modifications of the terms of the bond, its holding was that the bond was properly forfeited: "If it is the defendant in custody of the surety who moves for modification of the bail terms,

as in the present case, the surety must look to the defendant for notice of the motion or discover it itself from checking the court docket." See also *Detroit Fidelity & Surety Co.* v. *United States*, 36 F. 2d 682 (C.A. 6). In the present case, petitioner, a compensated and experienced surety, could anticipate the enlargment of the travel restriction, a not uncommon practice, and one entirely in accordance with the bond contract. In permitting Mrs. Davis to visit a city in a neighboring state, the court did not render petitioner's performance under its bond impossible. It thus did not absolve petitioner from the duty of producing her in court when required.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1969.

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